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S E C R E T KABUL 001755

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STATE FOR P, SCA/FO (DAS GASTRIGHT), SCA/A (SINGRAM), S/WCI
(MSTAMILIO, MSHIN), L/PM (EPELOFSKY)
NSC FOR AHARRIMAN
OSD FOR ARICCI
CENTCOM FOR CG CJTF-82, POLAD, CSTC-A, SOUTHCOM, JTF-GTMO

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TAGS: [KAWC](#) [MARR](#) [PTER](#) [PGOV](#) [PINS](#) [PREL](#) [AF](#)
SUBJECT: DETAINEE LEGAL FRAMEWORK: CHARGES OUTLINED AGAINST
FIRST DETAINEES TRANSFERRED FROM BTIF TO ANDF

REF: A. KABUL 01577
[B. KABUL 01558](#)
[C. KABUL 01220](#)
[D. KABUL 00956](#)
[E. KABUL 10191](#)

Classified By: Acting Deputy Chief of Mission Carol A. Rodley; reasons
1.4(b) and (d).

[1](#)1. (S/NF) Summary: The Afghan National Directorate of Security (NDS) legal adviser has now outlined charges to be brought against 10 of the first group of 12 detainees transferred to the Afghan National Detention Facility (ANDF). NDS is waiting for information from provinces in the remaining two cases. Investigation is ongoing in several cases regarding more serious charges than those with which detainees will now be charged. Charges are based on the 1976 Afghan Penal Code, the 1987 Law on Crimes Against Internal and External Security, the 2005 Counter-Narcotics Law, and the 2005 Law on Firearms, Equipment, and Explosives, and typically result in prison sentences ranging from three years to, for at least two cases, a life sentence or the death penalty. GOA investigations after detainees were physically transferred have in some cases uncovered additional evidence, such as that allowing prosecution on narcotics charges in one case. Although the 30-day pretrial detention limit has passed for the initial detainees, NDS has now shown us the classified National Security Law of August 2003, signed by President Karzai. NDS has acknowledged that GOA interprets one of its articles as allowing NDS to extend detention while investigating cases. The national security court system allows either the prosecutor or defense to appeal sentences. As detainee cases begin moving through the security court system, post will continue monitoring the case proceedings in consultation with NDS and the Office of the National Security Council (ONSC). The NDS Legal Advisor stated that payoffs to corrupt prosecutors and judges during the appellate stages can improperly influence decisions. End Summary.

Relevant Laws, Possible Sentences

[1](#)2. (S/NF) During a four-hour meeting on 20 May, Mr.

Zuhore-u-Rasoli, Legal Adviser to National Directorate of Security, oriented CSTC-A's Chief of Operational Law and Polmiloff to the relevant Afghan laws under which the first detainees transferred from Bagram Theater Internment Facility (BTIF) to the Afghan National Detention Facility (ANDF) will be charged and prosecuted. Detainees were transferred on April 2, though the interagency Detainee Review Board (DRB) considers April 8, when the DRB was officially notified by the Office of the National Security Council (ONSC), the operative transfer date (reftel C). The last evidentiary files for these cases were transferred on March 11. The DRB has asked that evidence be transferred 30 days ahead of a detainee's physical transfer.

13. (S/NF) GOA investigations after detainees were physically transferred have in some cases uncovered additional evidence, such as that allowing prosecution on narcotics charges in one case. Charges are based on the Afghan Penal Code, the 1987 Law on Crimes Against Internal and External Security, the 2005 Counter-Narcotics Law, and the 2005 Law on Firearms, Equipment, and Explosives. Charges planned typically result in prison sentences ranging from three years to, for at least two cases, a life sentence or the death penalty. Unofficial English translations of the first three laws may be found at www.afghanistantranslation.com/index.html; only the Dari and Pashto versions as published in gazettes are official versions. Post is obtaining a copy of the firearms law, published in gazette 855 on June 21, 2005.

NDS Authorities

14. (S/NF) The 30-day pretrial detention limit has now passed for the first 12 detainees transferred. NDS has, however, now shown CSTC-A's Chief of Operational Law and polmiloff the classified National Security Law of August 28, 2003, sometimes referred to as the "secret law," signed by President Karzai. Its chapters cover the following NDS-related topics: Purpose, Goals, Duties and Authorities of NDS, Collection of Information, Director General NDS, Inspector General, Duties and Rights of Officers, Organization of NDS, Interagency Coordination, Secrecy of Information, and Final Provisions. Chapter 3's Section 10 of Article 9 on "Duties and Authorities of NDS" authorizes NDS to "investigate and carry out arrests and detention in accordance with the criminal laws involving national and foreign security (organized crime) which harms the national security of Afghanistan." Rasoli stressed that this 2003 document is intended to authorize NDS to arrest and investigate and is not a "punishment law" (reftel D). He acknowledged that Section 10 is interpreted by GOA as allowing NDS to extend detention while investigating cases. This law is closely held within NDS and ONSC, and Rasoli confirmed it has not been disseminated to other GOA ministries.

15. (S/NF) Rasoli also advised that there are plans to subject the 2003 NDS law "soon" to limited parliamentary review by forming a small "special commission" of 5-10 MPs to review it. NDS thinking is that the MPs' review could then be endorsed by Speaker Yunis Qanooni. (Comment: It is not clear if this plan has been discussed with Qanooni or at all outside NDS. The outcome of such an approach is hard to predict. End Comment)

Charges Against First 12; Procedures

16. (S/NF) Rasoli outlined plans to file the following charges "next week" against 10 of the following detainees now at ANDF and clarified that the charges will be relayed to the Attorney General (AG), whose office will then inform detainee of charges against them. A detainee may choose to defend himself or pay for a defense attorney; if a detainee is unable to afford a defense attorney, a government-appointed attorney will represent him. Rasoli advised that two weeks

after charges are relayed to the AG, the trial should start.

¶7. (S/NF) Rasoli specified that charges related to the firearms law also require the offender to pay the cost of the weapon or to return it and that charges related to Article 9 of the Internal/External Security law differentiate between those involved in organizing and funding and those who were actively fighting or involved in suicide attacks. While charges are now prepared for all but cases F and K below, ongoing investigation in five other cases (B, C, D, E, G, and H) may result in further charges being filed. Some detainees have confessed and admitted guilt.

¶A. US9AF-001795DP Hasta ((KHAN)) Weapons possession (Firearms law), internal/external security offenses (Article 9 of Law on Internal and External Security); typical sentence 8-12 years.

¶B. US9AF-001832DP Amrad ((GUL)) Weapons possession, internal/external security offenses (Article 9), leadership of group of criminals (Article 213 of Penal Code); typical sentence 7-10 years or longer (investigation ongoing).

¶C. US9AF-001159DP Abdul Fatah ((HAQQANNI)): Weapons possession, internal/external security offenses (Article 9), production/importation/possession of explosives (Article 362 of Penal Code); typical sentence 10 years--more if ongoing investigation proves planning of attacks.

¶D. US9AF-001605DP FNU ((MOHAMADULLAH)) Weapons possession, internal/external security offenses (Article 9), production/importation/possession of explosives. Typical sentence 10 years; more if further investigation into

narcotics ties proves not only possession and dealing but also business activity.

¶E. USAF-001483DP Sadar ((MOHAMMAD)) Weapons possession, internal/external security offenses (Articles 2, 23); Typical sentence 6-7 years. Mohammad is a Hizb-i-Islami Gulbuddin (HiG) member; further investigation may allow prosecution for antigovernment activity (Article 221, Penal Code) If so, the typical sentence is 20 years-death penalty.

¶F. AS9AF-002562DP Mullah Qayahm ((SAFIULLAH)) Safiullah has not confessed to allegations that he assassinated 14 Afghan National Police officers and coerced young boys to join a private army; US evidentiary files indicate no witnesses are available. NDS is waiting for a response on background checks from Uruzgan and Dai Kundi and continuing investigations.

¶G. US9AF-001656DP FNU ((RAHMATULLAH)) Antigovernment activity (Article 221 of Penal Code); typical sentence 7-8 years; more if command activity is proven. Rahmatullah has confessed to HiG membership but not to responsibility for commanding forces.

¶H. US9AF-001417DP Zia ((RAHMAN)) Internal/external security offenses; typical sentence 6-7 years. The Dari version of the US evidentiary file Rasoli had did not, however, contain information on an alleged murder that is in the English-language version; post is rechecking with CSTC-A and the Palace to ensure the complete file was passed to NDS.

¶I. US9AF-001239DP Amil ((KHAN)) Khan has confessed to weapons possession. Typical sentence is 3-7 years.

¶J. US9AF-001535DP Abdul ((WALI)) Weapons possession, internal/external security offenses (Articles 3,9). Typical sentence is 7 years. If witnesses can be located and will testify, charges of murder (Article 395 in Penal Code) will be brought and could result in a life sentence or the death penalty.

¶K. US9AF-001497DP Abdul ((SATAR)) Weapons possession charges are planned, but a response from Helmand on background checks is pending.

¶L. US9AF--001238DP Abdul ((BAKI)) Weapons possession (Article 362 of Penal Code); typical sentence is 7 or more years.

Trial, Appeal Considerations

¶8. (S/NF) Most if not all detainee cases that are prosecuted will be handled via the national security court system, which has trial and appellate courts and a national security court of last instance. At each appeal stage, either the prosecution or defense can appeal sentences. Rasoli confirmed that family or other payoffs to prosecutors can influence decisions at each stage; the level of corruption among the relevant judges is unknown. As detainee cases begin moving through the system, post intends to maintain pressure on GOA by continued monitoring of case proceedings in consultation with NDS and ONSC. Although only ONSC, NDS, and the Ministry of Interior now have access to detainee case files and their names, Rasoli expressed concern about continued discussion of detainee issues by the entire DRB. We will ask ONSC to coordinate suggestions on the DRB's role.
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